IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4383 OF 2005

WITH

WRIT PETITION NO. 4402 OF 2005

Shri Veershaiv Co-operative Bank Ltd.. ..Petitioners.
its registered office at 517/A-1,
Tara Rani Chowk, Kolhapur.

Versus

Arvind Daulu Patil ..Respondent.
of Kolhapur, at present residing at
G.S.No. 24/5E Ward, Tembalaiwadi
Kolhapur (M.S.)

Mr. A.Z. Mookhtiar for the Petitioners.
Mr. P.D. Dani for the Respondent.

CORAM : S. A. BOBDE, J.

DATED : 25TH JULY, 2005.

ORAL ORDER :

1. Rule, returnable forthwith.

. Mr. Dani, learned Advocate waives service of rule for the respondent in both the petitions.

. Heard by consent.

2. The parties in both the petitions are the same. The petitioners have challenged the orders of the Maharashtra State Co-operative Appellate Court in these two writ petitions, which are being disposed of by this common order.

3. Writ petition No. 4383/2005 is directed against the order of the Maharashtra State Co-operative Appellate Court dated 15th January, 2005 by which the learned Co-operative Court has struck off the preliminary issue framed by the trial court in the dispute filed by the respondent. The respondent has instituted the dispute C.S.S No. 1773/2001 in the Co-operative Court, Belapur. By the said dispute the respondent has challenged the resolution, terminating his services and the termination. He has also questioned the legality and propriety of the enquiry proceedings. Before the trial court, the petitioner made an application praying for - framing a

preliminary issue in accordance with the decision of the Supreme Court in the Cooper Engineering Ltd., vs. P.P. Mundhe, reported in AIR 1975 S.C. 1900 and for an order to prevent the respondents from examining a particular witness in the enquiry. Admittedly, the said witness was not examined in the enquiry. The trial court came to the conclusion that a preliminary issue regarding the legality and the propriety of the departmental enquiry has to be framed and would be required to be answered. But came to the conclusion that the respondent does not have a right to examine the witnesses proposed to be examined by him.

4. In the revision preferred by the respondent, the State Co-operative Appellate Court set aside the order of the trial court, framing the preliminary issue. That order is challenged by the Society in this present petition. The learned counsel for the petitioner submitted that the while deciding the revision, the appellate court has committed an error in observing that a preliminary issue cannot be framed at any stage of the proceedings, particularly, after issues have already been settled. For this purpose, the appellate court relied on Order 14, Rule (2). However, in my view, the appellate court has clearly

failed to notice Order 15 Rule 3, which reads as follows:-

> . 3. Parties at issue.-- (1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:
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> . Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

> (2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

5. It is obvious that the court is entitled to decide a preliminary issue and if the finding thereon is sufficient for the decision, it may be pronounced accordingly. In other words, it is then not necessary for the trial court to pronounce on other issues. This is clearly a salutary provision intended to save the time of the court. In this view of the matter the observations of the Appellate Court, while allowing the respondents's revision are erroneous and the order suffers from an error of law apparent on the face of it. The impugned order is, therefore, liable to be set aside.

6. The petitioner preferred another Appeal being A.O. No. 136/2003,being aggrieved by the order of allowing the respondent to examine his witness. In the said Appeal, the appellate court by order dated

29.04.2005 confirmed the order of the trial court and permitted the respondent to examine his witness. This order dated 29.04.2005, which is challenged in the writ petition No. 4402/2005, is also in view of the above observations, liable to be set aside.

7. In this view of the matter, the trial court shall proceed to decide the preliminary issue as was required to be framed per Cooper's case (supra) first and depending on the finding of the trial court on that issue, the trial court may proceed with the dispute in accordance with law.

25.07.2005 (S.A.BOBDE,J.)